

Dispute Resolution Options for K-12 Students with Disabilities



DISABILITY LAW
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providing active voice and supporting civil rights
for people with disabilities

Agenda

- Importance of this Topic
- Informal & Semi-Formal Dispute Resolution Options – Very brief overview
- ***Formal Administrative Dispute Resolution Options (7) – this is where we're focusing today!***
- Lawsuits – CALL A LAWYER – we won't be covering lawsuits in detail today

Why is this important?

- Different Processes have Different:
 - Laws over which they have jurisdiction
 - Deadlines for filing a complaint
 - Requirements for filing a complaint
 - Requirements to open a complaint for investigation
 - Methods of resolving disputes
 - Processes for “investigating” claims
 - Timelines for decisions
 - Potential Remedies

Informal & Semi-Formal Dispute Resolution Options

- Requesting an IEP or Section 504 meeting
- Bringing an advocate or friend to a meeting
- Communicating concerns to someone within the school, such as the Principal or School Counselor (in writing)
- Communicating concerns to someone within the district, such as the Special Education Director, Section 504 Coordinator (may also be at the school level, but district is required to have one), or Superintendent (in writing)
- Following the district's Section 504 grievance procedures
- *We are not really talking about these during this training, but we do encourage parents to start here.*

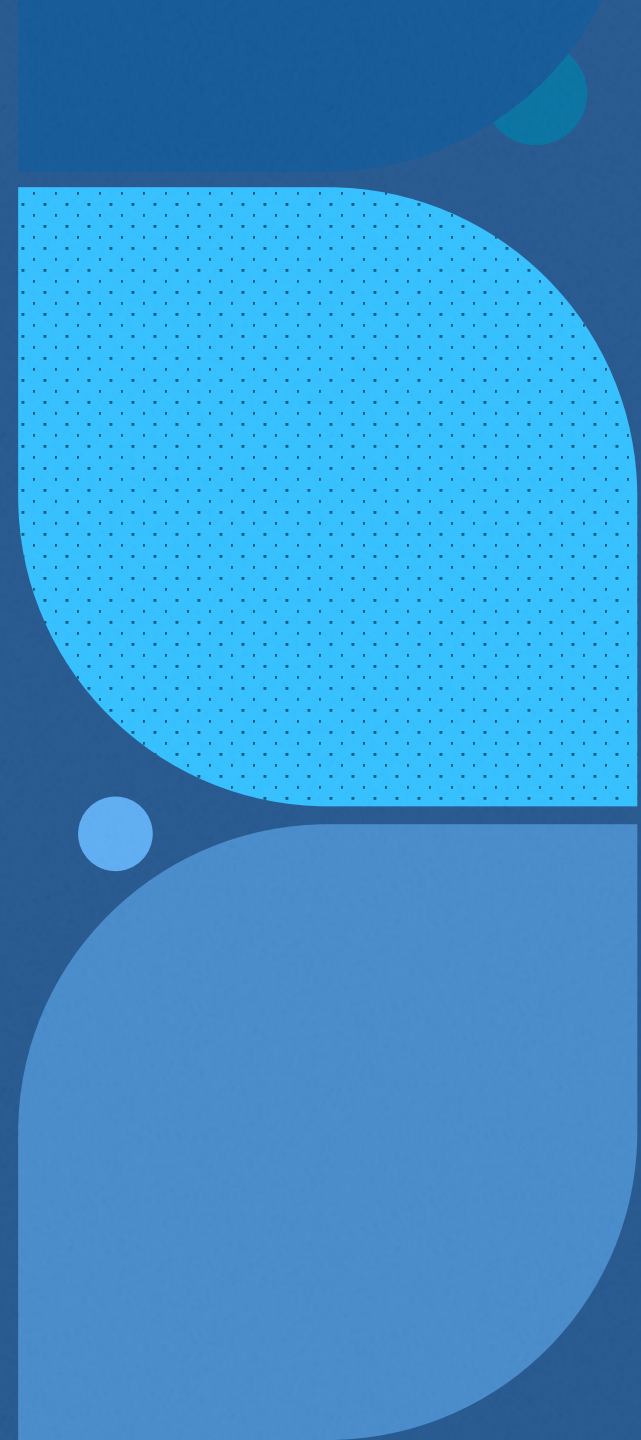
Formal Administrative Dispute Resolution Options

- Facilitated IEP Meeting
- Mediation through the Colorado Department of Education (CDE) [Mediation through CDE]
- State Complaint to CDE [State Complaint]
- Due Process Complaint to CDE [Due Process Complaint]
- U.S. Department of Education Office for Civil Rights Complaint [OCR Complaint]
- U.S. Department of Justice Complaint [DOJ Complaint]
 - Disability Rights Section
 - Educational Opportunities Section
- Colorado Civil Rights Division Complaint [CCRD Complaint]

Topics We'll Cover for Administrative Complaint Option

- Process & Timelines
- Issues that can be Addressed
- Pros & Cons
- Potential Remedies

Facilitated IEP Meetings



Facilitated IEP Meetings: Process & Timelines

- Available for disputes if your child has an IEP [IDEA and ECEA]
- Can be requested at any time (but keep other deadlines for the complaint options in mind) → Request form: [2023 Special Education Facilitation Request Form](#)
- Voluntary on both sides (parent and school district)
- Neutral third party comes in to facilitate the meeting and they don't have any decision-making power
- Can last an hour or several hours depending on the needs of the child and the team
- All required IEP team members must attend + other relevant members who are invited by the parent or school district
- Goal is an updated IEP for the child

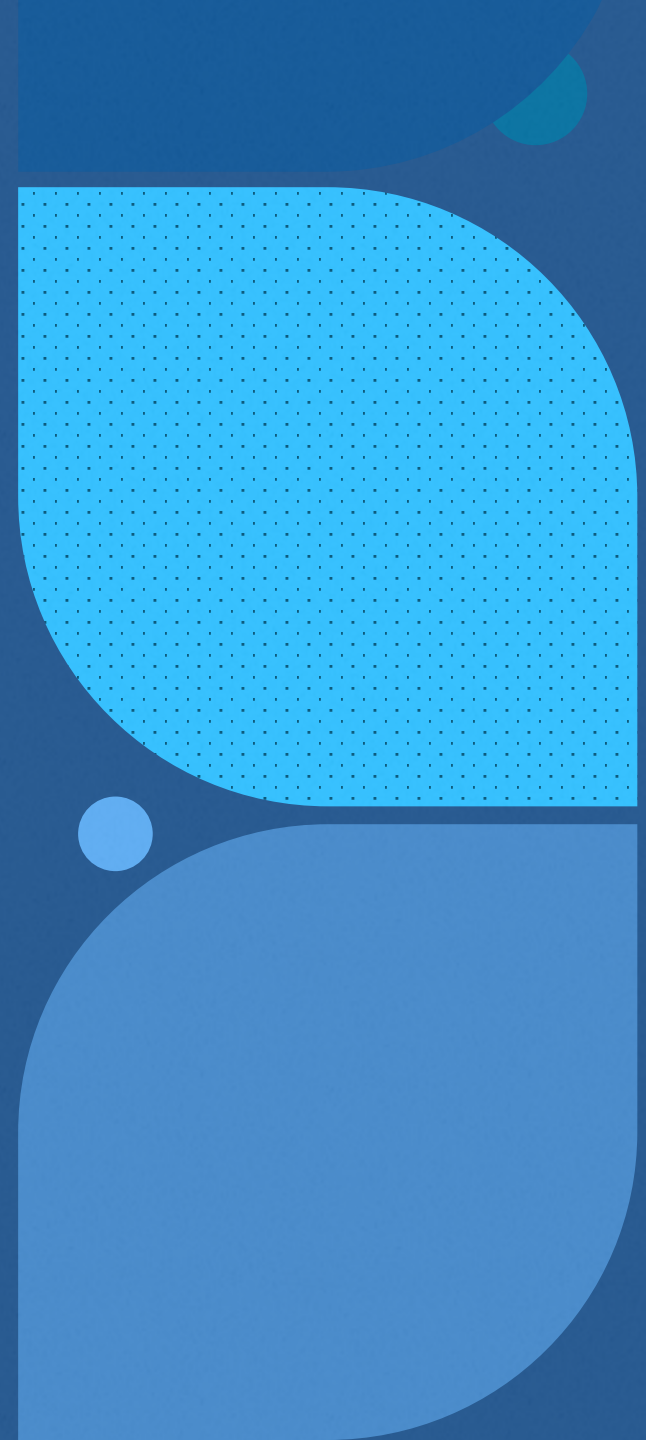
Facilitated IEP Meetings: Issues You Can Address

- Services in a child's IEP, including:
 - Special education
 - Occupational therapy
 - Physical therapy
 - Speech therapy
 - Transportation
- The least restrictive environment appropriate for the child
- The student's goals
- Eligibility
- Manifestation determination reviews
- Essentially, anything you could talk about in a regular IEP meeting!

Facilitated IEP Meetings: Pros & Cons

- Pros
 - Free
 - Minimally adversarial & student-centered
 - Can address any concerns relating to a student's IEP
 - Team could potentially develop a plan for compensatory services
- Cons
 - School district can say no
 - Can't recoup for attorneys' fees (but you don't necessarily need an attorney)
 - No decision made regarding any alleged violations

Mediation through CDE



Mediation through CDE: Process & Timelines

- Available for disputes if your child has an IEP or if you think your child should be eligible for an IEP [IDEA and ECEA]
- Can be requested at any time (but keep other deadlines for the complaint options in mind)
- Can be requested even after filing a state or due process complaint
- Can be requested by a parent or the school districts → How to Request: [Mediation | CDE \(state.co.us\)](#)
- Voluntary on both sides (parent and school district) – once 1 party request, CDE contacts the other party to see if they are also interested in mediation
- If both sides agree to mediation, a neutral mediator is assigned
- The mediator then reaches out to schedule mediation at a mutually agreeable date, time, and location (can be virtual or in person)

Mediation through CDE: Process & Timelines (cont.)

- Prior to mediation, everyone signs an *Agreement to Mediate* that includes a statement that everything discussed during mediation is confidential
- Mediation is not usually attended by the entire IEP team
- At the start of mediation, the parent is usually given an opportunity to explain why everyone is at the table (good to focus on moving forward and supporting the student rather than focusing on the things that have gone wrong)
- Usually then break into separate rooms and the mediator goes back and forth (“shuttled” mediation)
- If everyone ultimately agrees on terms, a settlement agreement is developed and signed
- If there is an impasse, a parent may pursue complaint options (but everything discussed in mediation must still be kept confidential)

Mediation through CDE : Issues You Can Address

- Mediation is available to resolve disagreements concerning special education and related services including:
 - identification,
 - evaluation,
 - eligibility,
 - development and implementation of the student's IEP,
 - least restrictive environment,
 - discipline, and/or
 - other matters protected by the Individuals with Disabilities Education Act (IDEA) or Exceptional Children's Educational Act (ECEA)
- Note: You can potentially also address concerns relating to the ADA and Section 504 and should do so because you will probably be asked to waive these claims as well

Mediation through CDE :

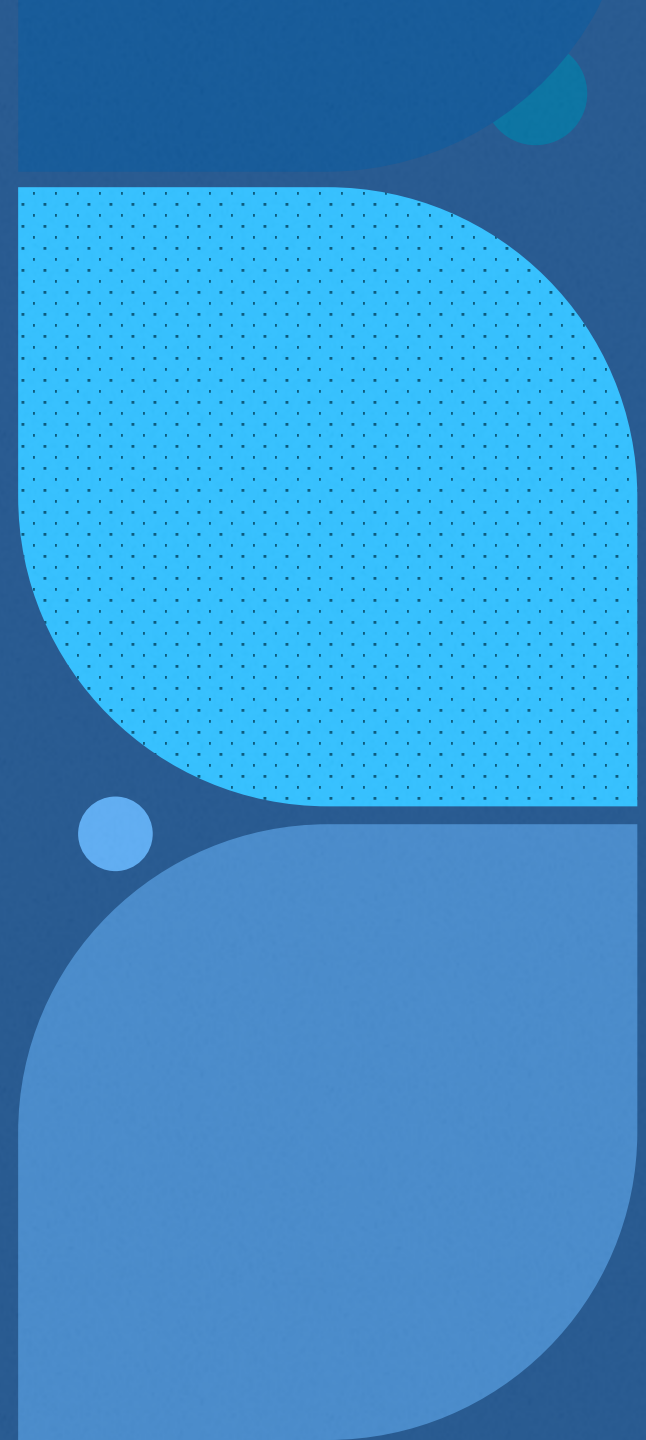
Pros & Cons

- Pros
 - Free
 - Gives parties the power to develop settlement terms (can think creatively)
 - Less adversarial than going through a full complaint process
- Cons
 - Can't recoup attorneys' fees (but you don't necessarily need an attorney)
 - Have to waive all claims up to the date of the agreement
 - If the settlement agreement is breached, enforcement is through filing an action in court (unless the terms were put into the child's IEP, then you can follow those dispute resolution processes)
 - No decision regarding alleged violations
 - Strictly confidential and usually includes a clause that you cannot even discuss the settlement agreement terms
 - May have to pay taxes if you get money as part of the settlement

Mediation through CDE : Potential Remedies

- Revisions to policies & procedures
- Training for Staff
- Re-evaluations & functional behavior assessments
- Compensatory Services
 - Directly from district staff
 - Reimbursement for private providers, camp, therapeutic riding, etc.
 - Monetary sum that you can use for services
- Not necessarily limited to what a decisionmaker through a complaint process would order if violations were found through a full investigation because the district is avoiding having to go through a full investigation if you settle at mediation and that is something of value to them because of time and resources

State Complaints



State Complaints: Process & Timelines

- Available for disputes if your child has an IEP or if you think your child should have been identified as being eligible for an IEP [IDEA and ECEA]
- Also available for violations of CO's Protection of Individuals from Restraint & Seclusion Act [PPRA]
- Can be filed by ANYONE
- Must be filed within 1 year of the alleged violation
- Complaint must be mailed or hand delivered to CDE & you must provide a copy of the complaint to the Special Education Director – More info here: [State Complaints | CDE](#)
- Do not have to make legal arguments – just present your story – standard for opening an investigation is whether the facts as alleged would be a violation of a law CDE enforces
- Can still request mediation even after you file (or district may request once it knows you filed)
- CDE assigns a State Complaints Officer (all attorneys) to each complaint

State Complaints: Process & Timelines (Cont.)

- Once a complaint is opened for investigation, district is given an opportunity to submit a written response
- The person who filed a complaint can then submit a written reply (purpose is to address anything new/different based on response, not to rehash what was in the complaint)
- State Complaints Officer then investigates – reviews records, conducts interviews, etc.
- Within 60 days of the complaint being received by CDE, they issue a decision and order corrective action if violations were found
- CDE then monitors the corrective action until all requirements are met by the district
- State complaints cannot be appealed, but district or parent can still file due process (de novo review)

State Complaints: Issues You Can Address

- Concerns relating to the IDEA or ECEA, including:
 - Child Find/identification,
 - Evaluations/Re-evaluations,
 - Eligibility,
 - Development and implementation of the student's IEP,
 - Provision of FAPE,
 - Least restrictive environment, and
 - Discipline
- Concerns relating to the use of restraint and seclusion in schools (limited to the requirements in state law and the IDEA – will not analyze under the ADA or Section 504)
- Concerns relating to records access, confidentiality, and personnel qualifications

State Complaints: Pros & Cons

- Pros
 - Fairly quick resolution
 - Specific compensatory services will be ordered by CDE if they determine a child is owed these services
 - If violations are found (or not), there will be a public decision that you are allowed to share
- Cons
 - Can't recoup attorneys' fees (but don't necessarily need an attorney)
 - Can't analyze issues through framework of the ADA/Section 504
 - Can't address potential violations under Title VI or IX (sometimes the issues are intersectional)
 - Could become moot if a due process complaint is filed later on the same issues (though some issues may be preserved in state complaint if they can't be addressed in due process)

State Complaints: Potential Remedies

- Revisions to policies & procedures
- Training for Staff
- Re-evaluations & functional behavior assessments
- Compensatory Services → state complaint decision usually orders specific type and amount based on a qualitative analysis
- Program audit (we've only seen this once)

Due Process Complaints

The right side of the slide features a decorative graphic. It consists of several overlapping circular and semi-circular shapes. The top-most shape is a dark blue circle. Below it is a larger semi-circle filled with a light blue dotted pattern. At the bottom is a large, rounded rectangular shape in a medium blue color. A small, solid light blue circle is positioned between the dotted semi-circle and the rounded rectangle.

Due Process Complaints: Process & Timelines

- Available for disputes if your child has an IEP or if you think your child should have been identified as being eligible for an IEP [IDEA and ECEA]
- Must be filed within 2 years of the alleged violation
- May be filed by a parent, guardian, or administrative unit (district, BOCES, or State-Operated Program)
- Complaint must be mailed or faxed to CDE & you must also provide a copy to the district → More info: [Due Process Complaints](#)
- Once complaint is received, an Administrative Law Judge (ALJ) is assigned
- Responding party then has 10 days to file a written response
- Within 15 days of receiving the complaint, the ALJ must convene a resolution meeting w/ the parent and relevant members of the IEP team (if parent doesn't have attorney, school district can't have attorney)
- Within 30 days of receiving the complaint, ALJ schedules a prehearing conference where the parties talk about logistics of the hearing

Due Process Complaints: Process & Timelines (Cont.)

- Can still request mediation after filing a due process complaint
- Decision issued 75 days after the complaint is filed (unless timeline is extended)
- If the complaint concerns a disciplinary change of placement (suspension or expulsion greater than 10 days) or disagreements about a manifestation determination, the DPC will be expedited → hearing must take place within 20 school days of the complaint being properly filed, and a decision must be issued within 10 school days of that hearing
- If not following order of ALJ after due process decision, can file a state complaint to request an investigation
- Can appeal a due process decision to state or federal court

Due Process Complaints: Issues You Can Address

- Can address alleged violations of the IDEA or ECEA about
 - identification,
 - evaluation, or
 - educational placement of a child with a disability, or
 - the provision of a Free Appropriate Public Education (e.g., special education program, supports and services provided to the child)

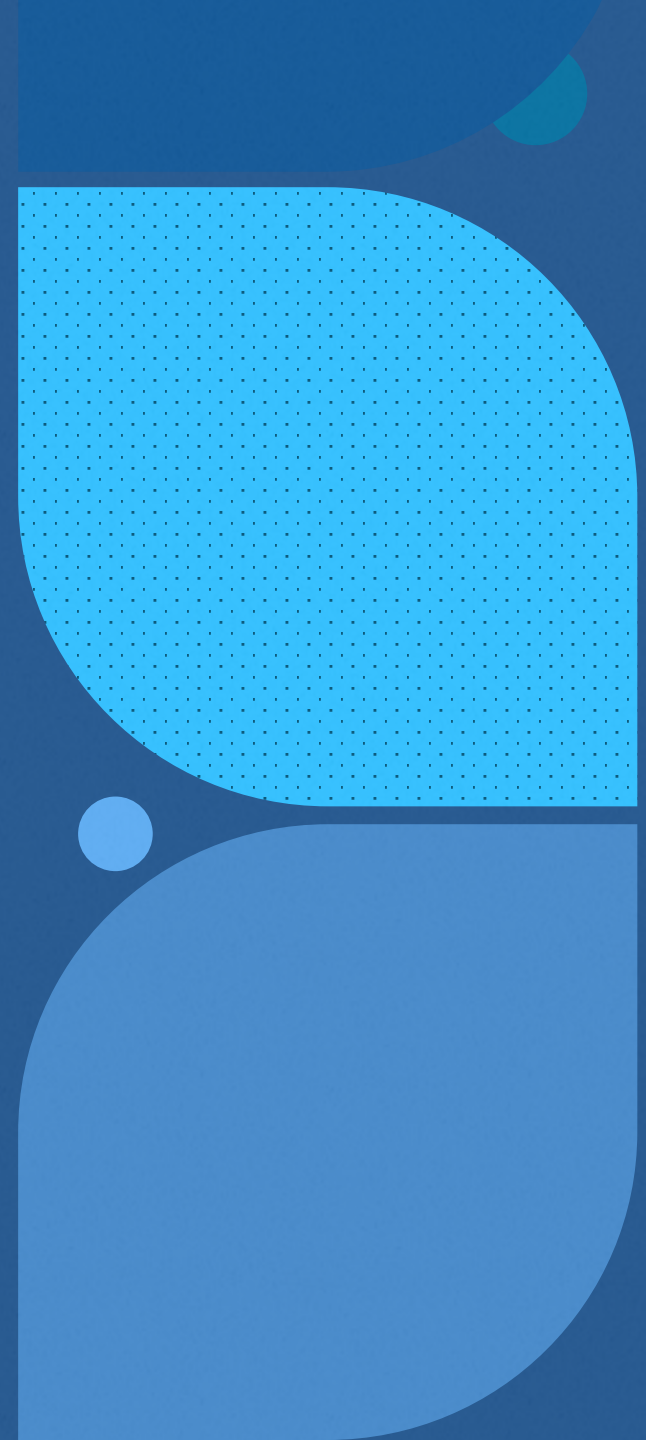
Due Process Complaints: Pros & Cons

- Pros
 - Stay Put
 - Fairly quick resolution
 - Can recoup attorneys' fees
 - Only way to exhaust administrative remedies to file a lawsuit under the IDEA
- Cons
 - Can't address systemic issues
 - Can't address concerns relating to Title VI or Title IX if there are intersectional issues
 - Probably need an attorney
 - Administrative court proceeding – must submit evidence, call & question witnesses, provide objections
 - Very adversarial
 - Can be ordered to pay the district's attorneys' fees

Due Process Complaints: Potential Remedies

- Compensatory services
- Tuition reimbursement
- Specific placement

OCR Complaints



OCR Complaints: Process & Timelines

- Available for disputes if a person has a disability and the entity receives federal funding [ADA Title II & Section 504]
- Must be filed within 180 calendar days of the alleged violation
- May be filed by ANYONE
- Complaint can be submitted via OCR's online form, email, or through the mail → more info: [Questions and Answers on OCR's Complaint Process \(ed.gov\)](#)
- Once complaint is received, OCR assigns an investigator (some are attorneys, some aren't)
- OCR then determines whether allegations are timely and whether they will open for investigation (they must review every complaint)
- When the complainant receives notification letter explaining the complaint will be investigated, that's the first time OCR provides notification to the recipient about the complaint

OCR Complaints: Process & Timelines (Cont.)

- OCR will dismiss if you have raised your concerns elsewhere and are waiting for a decision
- You can request mediation at any time – voluntary for both sides – if you successfully mediate and there's a breach, can re-file your OCR complaint
- Once OCR opens, they will request documentation to review and conduct interviews with relevant people
- OCR may resolve through dismissal, rapid resolution process, mediation, voluntary agreement w/ the recipient, or complete a full investigation (303(a) – no violation; or 303(b) – violation finding)
- If there is a resolution agreement (either voluntary or through a 303(b) finding), OCR monitors the terms of that agreement until the recipient completes all necessary tasks
- There are no strict timelines for OCR's investigation process

OCR Complaints: Issues You Can Address

- Failure to evaluate or reevaluate
- Failure to individualize or implement a 504 plan or IEP
- Failure to follow grievance procedures
- Bullying (harassment)
- Different treatment, disparate impact
- Retaliation
- Extracurriculars
- Denial of equal enjoyment of goods and services
- Failure to accommodate parent
- Language access
- Racial discrimination
- Gender discrimination

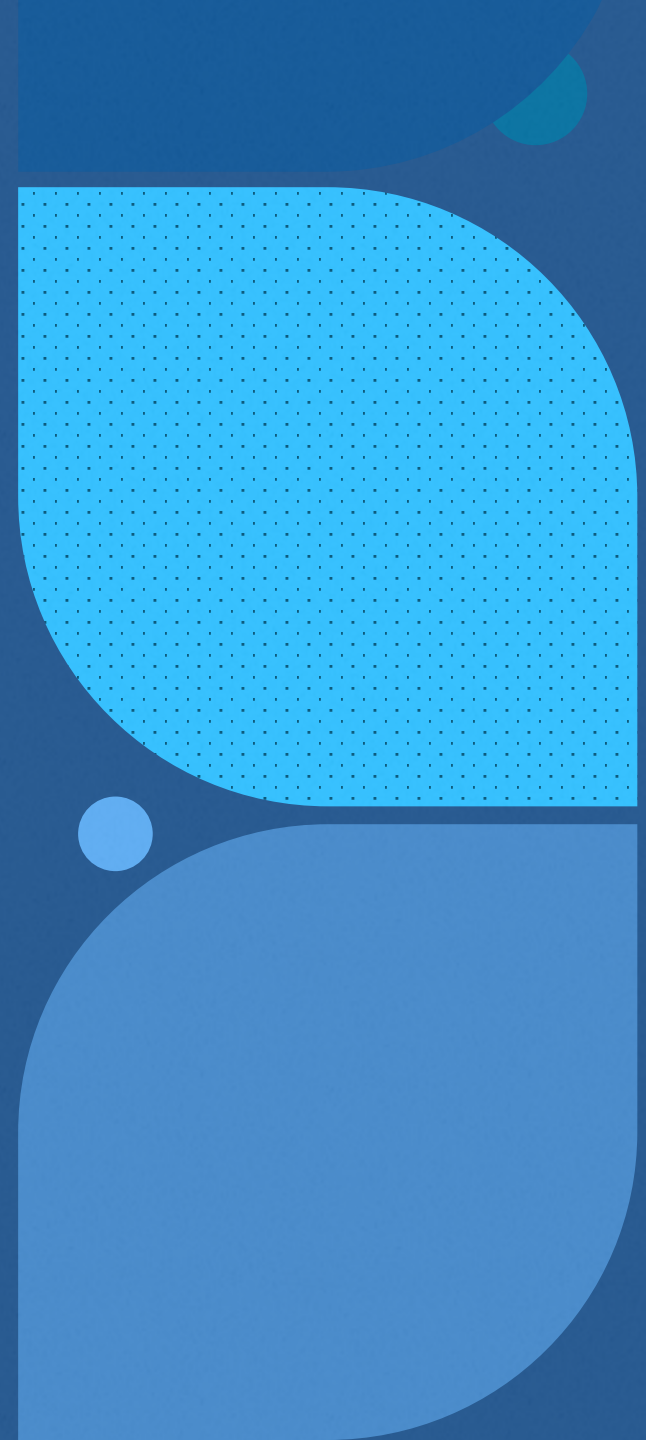
OCR Complaints: Pros & Cons

- Pros
 - Can address intersectional claims (gender, race, language access)
 - Can address systemic concerns
 - School staff can file and ask that their identity remain confidential
- Cons
 - OCR controls whether you can attempt resolution through mediation
 - No jurisdiction over IDEA, so claims not analyzed under those requirements
 - No timelines in their investigation process
 - Defer to IEP/504 team to determine compensatory services
 - Sometimes monitoring of resolution agreements is delayed and lasts years

OCR Complaints: Potential Remedies

- Section 504 or IEP team meeting to discuss whether compensatory services are owed and if so, the amount and how they will be delivered
- Section 504 or IEP team meeting to discuss remedial measures that may be needed
- Revisions to policies and procedures
- Staff trainings
- Student trainings & climate surveys
- New programming
- Opportunity to reapply or reenroll

DOJ Complaints



DOJ Complaints: Process & Timelines

- Available for disputes if a person has a disability [ADA Titles II/III & Section 504]
- No strict timeline for filing, but more recent issues have a better chance of being investigated
- May be filed by ANYONE
- Complaint can be submitted online or by mail or fax → [File a Complaint | ADA.gov](#)
- DOJ may refer complaint to another entity (like OCR or EEOC) or they may investigate, they do not have any requirement to investigate every complaint filed
- DOJ does significant research into the issue before officially opening an investigation
- Not always clear when DOJ has officially opened an investigation
- DOJ investigations can take years (2-6)
- Have seen DOJ investigations looking back 3 school years

DOJ Complaints: Process & Timelines (Cont.)

- Based on our experience, DOJ seems more interested in systemic issues than individual complaints
- DOJ has a mediation program that your case may be referred to
- If DOJ identifies violations, they issue a Letter of Findings that explains the violations and what steps need to be taken to remedy those violations
- DOJ then attempts to negotiate a settlement agreement with the entity – terms often include reporting to DOJ for # of years
- If settlement is unsuccessful, the DOJ can pursue litigation

DOJ Complaints: Issues You Can Address

- Failure to evaluate or reevaluate
- Failure to individualize or implement a 504 plan or IEP
- Bullying (harassment)
- Different treatment, disparate impact
- Retaliation
- Extracurriculars
- Denial of equal enjoyment of goods and services
- Failure to accommodate parent
- Language access
- Racial discrimination
- Gender discrimination

CAVEAT: If you are filing an individual complaint, these seem to get referred to OCR. Similarly, a systemic school choice complaint we filed got referred to OCR. The DOJ currently seems most interested in restraint & seclusion and residential schools for youth in foster care.

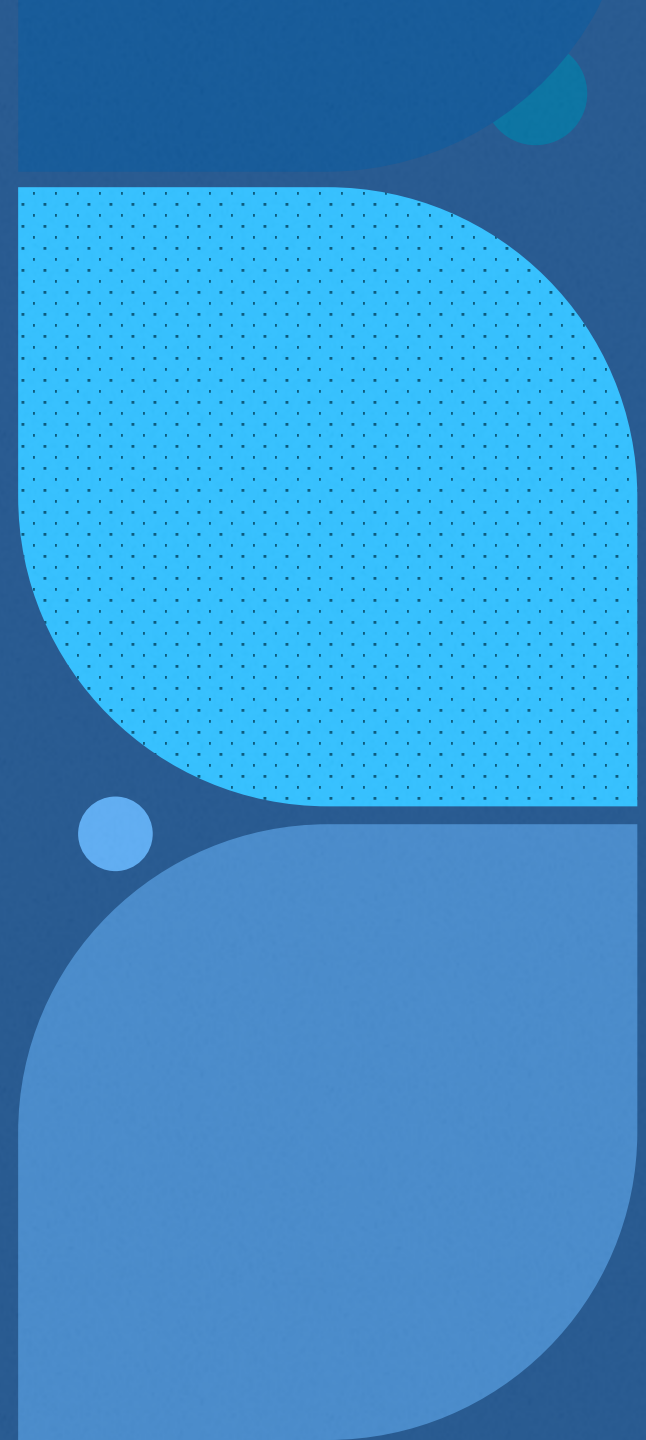
DOJ Complaints: Pros & Cons

- Pros
 - Can address language access, gender, and racial discrimination issues
 - Can lead to massive changes
 - DOJ can litigate the matter if it comes to that
- Cons
 - DOJ doesn't have to investigate every complaint they receive
 - Process is not very transparent
 - Complainant not involved in settlement negotiations
 - Investigations can take years

DOJ Complaints: Potential Remedies

- Revisions to policies and procedures
 - End use of seclusion
 - Limitations around use of restraint
 - Require counseling for students who were restrained
- Designated staff to collect and analyze data
- Staff trainings
- Hiring new positions

CCRD Complaints



CCRD Complaints: Process & Timelines

- Available for disputes if a person has a disability [Colorado Anti-Discrimination Act]
- Must be filed within 60 calendar days of the alleged violation (date you submit the intake with CCRD is NOT the filing date – there are additional steps after their intake before your complaint is considered final and filed), but they seem to respond fairly quickly if you are close to a timeline
- More info: [CaseConnect Start \(force.com\)](https://www.force.com)
- May request mediation through CCRD
- Complaint → Response → Rebuttal
- CCRD will conduct document review and interview relevant people
- Ultimately issue cause or no cause finding
- If cause finding, enter conciliation
- If no cause finding, you could still file a lawsuit (but beware of exhaustion, which we'll talk about later)

CCRD Complaints: Issues You Can Address

- Denial of equal enjoyment of goods and services
- Different treatment
- Disparate impact
- Retaliation

CAVEAT: While the CCRD process is available, we generally recommend one of the other processes because of the laws the other entities enforce and their familiarity with education-specific requirements.

CCRD Complaints: Pros & Cons

- Pros
 - Also protects gender, gender identity, sexual orientation, creed, color, national origin, race, marital status, etc.
 - Complainant has some say in remedies through conciliation
- Cons
 - Short deadline to file
 - Only analyzes based on CADA
 - Not a lot of familiarity with school issues
 - Not a high rate of success

Lawsuits

- Exhaustion is required for claims under the IDEA (this means you must go through due process before filing a lawsuit)
- Although the ADA and Section 504 do not require exhaustion, courts have required families to go through due process before filing a lawsuit even in cases where they have not mentioned the IDEA because the judge believed the claims could have included IDEA claims
- What does this mean? → **CALL A LAWYER** if you are considering filing a lawsuit



Need Help?

Go to disabilitylawco.org/we-may-be-able-help-you or call (303) 722-0300 to access our intake process

Find more information about your rights at disabilitylawco.org/resources/fact-sheets